

HOUSE BILL 1290

By Butt

AN ACT to amend Tennessee Code Annotated, Title 4, Chapter 3; Title 39, Chapter 13; Title 39, Chapter 17; Title 39, Chapter 11 and Title 40, Chapter 33, relative to drug paraphernalia.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 39-17-424, is amended by adding the following new appropriately designated subdivisions thereto:

() National and local advertising concerning the object's use, including but not limited to, advertising of the item in magazines or other means which specifically encourages or promotes the illegal use, manufacture, distribution or cultivation of controlled substances;

() Direct or circumstantial evidence of the ratio of sales of the object to the total sales of the business enterprise;

() Whether the object is customarily intended for use as drug paraphernalia and the existence and scope of other legitimate uses for the object in the community;

() Any evidence that the object can or has been used to store a controlled substance or to introduce a controlled substance into the human body as opposed to any legitimate use of the object;

() Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom the owner knows intend to use the object to facilitate a violation of the controlled substances laws of this state;

SECTION 2. Tennessee Code Annotated, Section 39-17-424, is amended by designating the existing language as subsection (a) and adding the following new subsection (b):

(b) The fact that an object has not yet been used or did not contain a controlled substance shall not be a defense to a charge that the object was possessed with the intention for use as drug paraphernalia.

SECTION 3. Tennessee Code Annotated, Section 39-17-425, is amended by adding the following new subsections thereto:

(d)

(1) It is an offense for any person to sell, offer for sale or advertise for sale drug paraphernalia.

(2) A person who violates this subsection (d) commits a Class E felony.

(e) All drug paraphernalia used in violation of this section is subject to seizure by any law enforcement officer and shall be confiscated and destroyed, after its use as evidence, by order of the court in which a violation of this section is prosecuted.

SECTION 4. Tennessee Code Annotated, Title 39, Chapter 17, is amended by adding the following new part thereto:

39-17-1901.

This part shall be known and may be cited as the “Drug Paraphernalia Sale Prevention Act.”

39-17-1902.

As used in this part:

(1) “Department” means the department of agriculture; and

(2) “Drug paraphernalia” has the same meaning as § 39-17-402.

39-17-1903.

(a) The department shall enforce this part in a manner that may reasonably be expected to reduce the extent to which drug paraphernalia is sold to persons in this state, and shall conduct random, unannounced inspections at locations where tobacco

products, or products believed to be drug paraphernalia, or other like products are sold or distributed to ensure compliance with this part.

(b)

(1) Any person who sells, offers for sale or advertises for sale drug paraphernalia shall be subject to a civil penalty of one hundred dollars (\$100) for each item of drug paraphernalia that is sold or offered for sale; provided, that the maximum civil penalty shall be one thousand dollars (\$1,000).

(2) All drug paraphernalia sold or offered for sale is subject to seizure by the department at the time the department determines that such drug paraphernalia is being sold or offered for sale. The department shall destroy all drug paraphernalia that was seized by the department subsequent to:

(A) A finding, after a hearing conducted pursuant to subdivision

(c)(2), that a person has sold or offered for sale drug paraphernalia; or

(B) The expiration of thirty (30) days after the date a person received a civil assessment pursuant to this section, if such person did not request a hearing pursuant to subdivision (c)(2) within such thirty-day period.

(c) A civil penalty shall be assessed in the following manner:

(1) The commissioner shall issue the assessment of civil penalty against any person responsible for the sale or offer to sell drug paraphernalia. When assessing a civil penalty, the commissioner is authorized to assess the penalty against any person or persons determined by the commissioner to be responsible, in whole or in part, for contributing to or causing the sale or offer to occur, including, but not limited to, the owner, manager or employee of an establishment at which drug paraphernalia is sold or offered for sale;

(2) Any person against whom an assessment has been issued may secure a review of the assessment by filing with the commissioner a written petition setting forth the person's reasons for objection to the assessment and asking for a hearing before the commissioner;

(3) Any hearing before the commissioner shall be conducted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. An appeal from the final order of the commissioner may be taken by the person to whom the assessment was issued, and the appeal proceedings shall be conducted in accordance with the judicial review provisions of the Uniform Administrative Procedures Act, codified in §§ 4-5-322 and 4-5-323;

(4) If a petition for review is not filed within thirty (30) days after the date the person received a civil assessment pursuant to this section, the person shall be deemed to have consented to the assessment, and it shall become final.

Whenever an assessment has become final, the commissioner may apply to the chancery court of Davidson County for a judgment in the amount of the assessment and seek execution on the judgment. The chancery court of Davidson County shall treat a person's failure to file a petition for review of an assessment as a confession of judgment in the amount of the assessment; and

(5) Within ten (10) days of an assessment becoming final pursuant to this subsection (c), the department shall notify the district attorney general of the district in which the sale or offer for sale occurred. The notification made pursuant to this subdivision (c)(5) shall include notice of the assessment, including, any information relevant to a possible criminal investigation of a violation of § 39-17-425.

(d) All civil penalties collected pursuant to this section shall be deposited in the drug paraphernalia sale prevention fund created pursuant to § 39-17-1905.

39-17-1904.

(a) When determining whether an item is drug paraphernalia as defined by § 39-17-1902, the commissioner shall consider all logically relevant factors, including but not limited to, the factors set out in § 39-17-424.

(b) For purposes of this part, there is a presumption, unless rebutted by the factors referenced in subsection (a), that the following items are drug paraphernalia:

- (1) Water pipes;
- (2) Carburetion tubes and devices;
- (3) Smoking and carburetion masks;
- (4) Chamber pipes;
- (5) Carburetor pipes;
- (6) Electric pipes;
- (7) Chillums;
- (8) Bongs; and
- (9) Ice pipes or chillers.

39-17-1905.

(a) There is created in the state treasury a fund to be known as the drug paraphernalia sale prevention fund. All money in such fund shall be used by the treasurer to provide grants to the department of agriculture and local law enforcement agencies for purposes of reimbursing the department and agencies for the costs associated with administering this act. Moneys in the fund shall not revert to the general fund of the state, but shall remain available to be used as provided for in this section.

(b) Interest accruing on investments and deposits of the drug paraphernalia enforcement fund shall be credited to such account, shall not revert to the general fund, and shall be carried forward into each subsequent fiscal year.

(c) Moneys in the drug paraphernalia enforcement fund account shall be invested by the state treasurer in accordance with § 9-4-603.

SECTION 5. This act shall take effect July 1, 2011, the public welfare requiring it, and shall apply to all applicable offenses or violations committed on or after such date.